IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Chapter VII, Rule 32 (2) (b)
Description of case

Date of decision: 10th February, 2006

Second Appeal No. 156 of 2001
(Old No. 470 of 1982)

Ishwari Datt Joshi
S/o Ram Datt Joshi
R/o Bhawaniganj, Tehsil Haldwani
District- Nainital ……Appellant

Versus

1. Bhuwan Chandra Mungali "Deceased"
   1/1 Dr. Nirmal Chand Mungali
   1/2 Major Girija Shankar Mungali
   1/3 Kiran Kumar Mungali
   1/4 Anil Mungali
   1/5 Bhanu Mungali
   1/6 Vinay Mungali
   All S/o Sri Bhuwan Chandra Mungali
   1/7 Smt. Jaya
   D/o Sri late Bhuwan Chandra Mungali
   All R/o Bhuwanli Garden, Rampur Road
   Bhawaniganj, Haldwani
   Dosst. Nainital.
2. Municipal Board Haldwani-
   Cum-kathgodam …..Respondents

Shri Siddharth Sah, Advocate for the appellant.
Shri P.C. Bisht, Advocate for the respondent No. 1.
Shri Ashish Joshi, Advocate for the respondent No. 2.

A.F.R. (Approved for Reporting)
Not approved for Reporting

(Hon. Mr. Justice Prafulla C. Pant)

Date: 10.02.2006

Note: Bench Reader will attach this at the top of first page of the judgment when it is put up before the Judge for signature.

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Hon'ble Prafulla C. Pant, J.

This appeal, preferred under Section 100 of Code of Civil Procedure, 1908, is directed against the judgment and decree dated 17.11.1981 passed by Ist Additional District Judge, Nainital, in Civil Appeal No. 145 of 1980, whereby judgment and decree passed by trial court in civil suit No. 76 of 1979, has been upheld.

2. Brief facts of the case are that plaintiff-appellant is a tenant in a shop situated in Mohall Bhawani Ganj, Haldwani. The defendat-respondent No. 1 is the owner-landlord of the building. Defendant-respondent No. 2 is

Nagar Palika, Haldwani. The plaintiff instituted civil suit No. 76 of 1979 seeking relief of injunction against the defendants restraining them from demolishing the shop in question. It is pleaded in the plaint that the shop is in good and durable condition. It is further pleaded that before institution of the above suit, defendant No. pressurized the plaintiff to vacate the shop and instituted a Small Cause Suit No. 17 of 1974 for his eviction. However, the said S.C.C. suit was dismissed and the revision filed by the defendant No. 1 in said round of litigation, was also dismissed on 28.05.1977. Thereafter it is pleaded that the defendant No. 1 in collusion with defendant No. 2 got issued a notice dated 21.04.1979 under Section 263 of U.P. Municipalities Act, 1916, to demolish the building in question alleging that the same is in a dangerous condition. Lastly, pleading that plaintiff cannot be ousted from the shop where in he is selling betel (PAAN), an injunction h as been sought against the defendants.

3. The defendants-respondents contested the suit before the trial corut. Defendant No. 1 in his written statement has admitted that the plaintiff is his tenant in the shop in question on rent @ Rs. 21.16 per month. It is also admitted by him that earlier a small cause suit for eviction of the plaintiff was instituted which was dismissed. Bu it is denied if the defendant No. 1 is in collusion with the defendant No. 2. It is pleaded in the written statement that the building in question is 125 years old and in dilapidated condition. It is further pleaded that the notice under Section 263 of U.P. Municipalities Act, 1916, was issued by the Nagar Palika after due inspection of the house in suit. The house is made of wood, mud and stones and may cause injury to inhabitants at any time. Defendant-respondent No. 2 has also taken almost same pleas that the building in

question is in a dilapidated condition and notice under Section 263 of U.P. Municipalities Act, 1916 are issued after due inspection without colluding with any one.

4. The trial court, after framing issues, recording the evidence and hearing the parties, dismissed the suit holding that the building in question is in a dilapidated condition. Aggrieved by the judgment and decree of the trial court, plaintiff preferred civil appeal No. 145 of 1980 which was also dismissed. Hence this appeal.

5. I heard learned counsel for the parties and perused the entire record.

6. This appeal was admitted by Allahabad High Court on following six substantial questions of law:

"1. Whether a tenant of a building governed by U.P. Act 13 of 1972 is immune from eviction by the landlord except under provisions of sections 20 and 21 of the U.P. Act 13 of 1972.

2. Whether such a tenant is entitled to an injunction against the landlord restraining the latter from evicting him except under the provisions of U.P. Act 13 of 1972?

3. Whether the prescribed authority under section 21 of U.P. Act 13 of 1972 has alone the exclusive jurisdiction to determine whether the premises under tenancy are 'determine whether the premises under tenancy are 'dilapidated' as to warrant the eviction of the tenant under section 21 (1) (b) of the Act?

4. Whether the coru tbelow was bound by the finding on dilapidated character given by the prescribed authority in proceedings under section 21 (1) (b) of the U.P. Act 13 of 1972 being the finding of a tribunal of exclusive jurisdiction

to decide cases of eviction of tenants from dilapidated buildings under U.P. Act 13 of 1972?

5. Whether the court below erred in law in entering into the question of 'dilapidated' character of the building and giving a funding on it even though there was no issue framed on the point and the appellant hand not led any evidence on it in the bonfire belief that the point was relevant only in proceedings under section 21 of U.P. Act 13 of 1972?

6. Whether the admitted fact that notice under section 263 Municipalities Act was served on the landlord in response of the latter representing to the Board that the building was in dilapidated condition does not itself indicate that the landlord was using the device of a notice to circumvent section 21(1) (b) U.P. Act 13 of 1972 to obtain eviction of tenant?"

This appeal is received by this Court for disposal by transfer under Section 35 of U.P. Reorganization Act, 2000.

7. These substantial questions of law are interconnected and can be answered together.

Answers to substantial questions of law No. 1 to 6:

Admittedly the plaintiff appellant is a tenant of the defendant-respondent No.1, in the shop in question, on rent @ Rs. 21.16 per month. It is also not disputed that before institution of the present suit in 1979, a Small Cause Suit was field in 1974 by defendant No. 1 against the present plaintiff for eviction on the ground of sub tenancy, the proceedings in respect of which terminated in favour of tenant finally in 1977 when provisional court dismissed the revision against dismissal of suit by the trial court. It is also admitted that notice under Section 263 (1) of U.P. Municipalities Act, 1916, was issued by the Nagar Palika (defendant- respondent No. 2) to the defendant No. 1 for

Demolition of the building. The entire controversy revolves proud the point whether the defendant No. 1, got the notice issued in collusion of defendant No. 2 with a motive to get the plaintiff evicted circumventing the provisions of U.P. Urban Buildings (Regulation of Letting, Rent and Eviction) Act 1972, and whether the building is not in dilapidated condition.

7. Before further discussions, it is pertinent to mention here the relevant provisions of Section 263 (1) of U.P. Municipalities Act, 1916 and Section 20(2) and Section 21 (1) of U.P. Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972, which are reproduced as under:-

Relevant provision fog Section 263 of U.P. Municipalities of Act 1916:

"263. Power for the prevention of danger from ruinous buildings, unprotected wells, etc.-(1) A Municipality may require by notice the owner or occupier of any land or building-

(a) to demolish or to repair in such manner as it deems necessary any building wall, bank or other structure, or anything affixed thereto, or to remove any tree, belonging to such owner or in the possession of such occupier which appears to the Municipality to be in a ruinous condition or dangerous to persons or property; or

(b) to repair, protect or enclose, in such manner as it deems necessary, any well, tank reservoir, pool or excavation belonging to such owner or in the possession of such occupier which appears to the Municipality to be dangerous by reason of its situation, want of repair or other such circumstances.

(2)……"

Relevant provisions of Sec. 20 and Sec. 21 (1) of U.P. Urban Buildings (Regulation of Letting, Rent and Eviction) Act. 1972:

*"**20. Bar of suit for eviction of tenant except on specified grounds** –(1) Save as provided in sub-section (2). No suit shall be instituted for the eviction of a tenant from a building, notwithstanding the determination of his tenancy be efflux of time or on the expiration of a notice to quit or in any other manner:*

Provided that nothing in his sub-section shall bar a suit for the eviction of a tenant on the determination of his tenancy by efflux of time where the tenancy for a fixed term was entered into by or in pursuance of a compromise or adjustment arrived at with reference to a suit, appeal, revision or otherwise reduced to writing and signed by the tenant.

(2) A suit for the eviction of a tenant from a building after the determination of his tenancy may be instituted on one or more of the following grounds, namely:

(a) that the tenant is in arrears of rent for not less than four months, and has failed to pay the same to the landlord within one month from the date of service upon him of a notice of demand:

Provided that in relation to tenant who is member of the armed forces of the Union and in whose favor the prescribed authority under the Indian Soldiers (Litigation) prescribed authority under the Indian Soldiers (Litigation) act, 1925 (Act No. IV of 1925), has issued a certificate that he is serving under special conditions within the meaning of Section 3 of the Act or where he has dies by enemy action while so serving, then in relation to his heirs, the words "four months" in this clause shall be deemed to have been substituted by the words "one year";

(b) that the tenant ha willfully caused or permitted to be caused substantial damage to the building;

(c) that the tenant has without the permission in writing of the landlord or structural alteration in the building as is likely to diminish its value or utility or to disfigure it;

(d) that the tenant [has without the consent in writing of the landlord used if for a purpose other than the purpose for which he was admitted to the tenancy of the building or otherwise done any act which is inconsistent with such usel, or has bene convicted under any law for the time being in force of an offence or using the building or allowing it to be used for illegal or immoral purposes;

(e) that the tenant has sub-let, in contravention of the provisions of Section 25 or, as the case may be, of the old Act the whole or any part of the building;

(f) that the tenant has renounced his character as such or denied the title of the landlord, and the latter has not waived his right of re-entry, or condoned the conduct of the tenant;

(g) that the tenant was allowed to occupy the building as part of his contract of employment under the landlord, and his employment has ceased.……..…”

“21. Proceedings for release of building under occupation of tenant*-)1) The prescribed authority may, on an application of the landlord in that behalf, order the eviction of a tenant from the building under tenancy or any specified part thereof if it is satisfied that any for the following grounds exists, namely,-*

(a) that the building is bona fide required either in its existing from or after demolition and new construction by the landlord for occupation by himself or any member of his family, or any persons for whose benefit it is held by him, either for

residential purposes or for purposes of any profession, trade or caling, or where the landlord is the trustee of a public charitable trust, for the objects of the trust;

(b) that the building is in a dilapidated condition and is required for purposes of demolition and new construction……..."

9. It is argued on behalf of the appellant that in the background of the fact that defendant No. 1 made attempts to evict the plaintiff by filing Small Cause Suit in 1974, coupled with the fact that the building is still standing during pendency of this appeal itself indicates that the notice issued by the Nagar Palika, Haldwani was not bonfire and the courts below erred in law in holding that the building is in dilapidated condition and not granting injunction in favour of the plaintiff. However, on perusal of the record, I found that P.W. 1 Ishwari Datt Joshi (plaintiff) himself admitted before the trial court that the building in question was one hundred years old. As to the fact whether the Engineers of Municipal Board inspected the building before issuance of notice for demolition, this witness has avoided the answer by saying that he is not aware if the engineers inspected the spot. D.W. 1 Manohar Singh Mehta who is an Engineer in Municipal Board, Haldwani has stated that building is in dilapidated condition as there are cracks in the walls, the roof in the seconded floor is likely to fall which is dangerous for life and property. D.W. 2 Bhuwan Chandra (Defendant No. 1) has stated that one portion of building in occupation of one Madan Singh has already, of its own, fallen down. In these circumstances, there appears no illegality or perversity in the findings of the trial court or that of lower appellate court that the building is in dilapidated condition. Merely

for the reason plaintiff is still able to run betel shop in a portion of building does not discredit the defendant's case.

10. This Court has no hesitation in answering the substantial question of law that the landlord cannot seek eviction of tenant by circumventing the provisions of U.P. Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 but the landlord (defendant No. 1) has no where sought eviction against the provisions of Act 13 of 1972. It is the Nagar Palika who is exercising its powers to save the life and property. I n other words this Court is of the view that the powers conferred on Municipal Boards under Section 263 of U.P. Municipalities Act, 1916 are independent of the rights of landlord under provisions of U.P. Urban Building (regulation of Letting, Rent and Eviction) Act, 1972. There is no case decided by Prescribed Authority under U.P. Act 13 of 1972, in respect of shop in question. The substantial questions of law raised in memo of appeal on this point are misconceived. The power of Prescribed Authority under aforesaid U.P. Act 13 of 1972 to give finding on application, moved under its Section 21 for release of house on the ground that building is dilapidated condition are independent of the powers of Nagar Palika to issue notice under Section 263 of U.P. Municipalities Act, 1961. Each authority may have its independent satisfaction on the point. In the case of application by the landlord for release of house on the ground that it is in dilapidated condition, Section 24 of U.P. Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 provides that after reconstruction of such house by landlord, the tenant can make request to District Magistrate to allot the same premises. But purpose and object of Section 263 of U.P. Municipalities Act, 1916, is different as the Municipal

Board is more concerned to save the lives of people living in the building or passing thought he roads near by the dilapidated building.

11. As far as question of finding of Prescribed Authority under U.P. Act 13 of 1972 is concerned there is no such finding in respect of shop in dispute which can be said to be contrary to the satisfaction of Nagar Palika. Otherwise also, since the plaintiff has not sought any relief to set aside notice issued by Municipla Board as such unless that is set side, the plaintiff is not entitled to the relief of injunction against the defendants that they should not demolish the building in question which includes the disputed show. Record of the trial court shows that parties have led all possible evidence on the question of dilapidated condition and argued it before both the courts below at length as such there is no injustice done to any party if separate issue on 'dilapidated' condition is not framed by the trial court. The other issues framed do cover the question and it h as been discussed and decided by the courts below. Accordingly all the substantial questions of law stand answered.

12. It is also argued on behalf of the petitioner by Shri Siddharth Sah, Advocate that under Section 287 of U.P. Municipalities Act, 1916, only the president or Executive Officer of Nagar Palika could have inspected the building and the persons other than those could have inspected the building only if the resolution is passed by the Municipal Board authorizing them to do so. It is contended that the Engineer who Inspected was not authorized to inspect the building as such notice issued by the Nagar Palika is illegal. In my opinion, the argument does not help the appellant for the reason that the notice has not been challenged in the suit

nor has been sought to be set aside as mentioned above. Therefore, it does not affect the legality of the impugned orders, challenged in this appeal.

13. In view of above discussions, the appeal is liable to be dismissed. The same is dismissed. Costs easy.

(Prafulla C. Pant, J.)

Dt: 10th February, 2006
Sweta